

Unto his Grace his Majesties High Commissioner, and the Honourable
 Estates of Parliament,

The PETITION of

The Earl of Southerland

Humbly Sheweth,

That where I having in a Former Petition, Represented to your Grace, and the Honourable Estates of Parliament the Circumstances of my Grand-children, the present Viscount of *Arbuthnot*, and his Brothers and Sisters, upon the reading thereof *Knox* being out of Town) there was a long day allowed to him to see and answer: But he being now returned, it is hoped that your Grace and Lordships will ordain him to answer the said Petition, and what farther is represented in this, against *Friday* next peremporie: But because in the former Petition, I do condescend upon a competent number of Friends on the Fathers side, and the like number upon the Mothers side, whom I crave to be appointed Administrators to my Grand Children, I shal endeavour to clear what I did design by the foresaid Proposal, and I am confident, upon due consideration, it will be found both just and necessary. And *1mo*. The saids Children are both Fatherless and Motherless, and destitute of all Tutors, for as I formerly represented, the Lords of Session, have most justly reduced the Testament, and Nomination of Tutors therein contained, as being imposed upon the late Viscount, the same never having been read to him: And it was also evidently Instructed, that the Persons who are nominat to be Tutors did malverse, by intrometting summarly with the Writs, and as there are now no Tutors Testamentary, so *Knox* can never be served Tutor of Law; Because, besides that without Reflection, it may be said that he is not fit for managing Affairs of such Weight and Importance as the present Viscounts are: So there are likewise competent Objections against him: *viz.* That he being sensible of his own unsufficiency, did interdict himself, in so far as concerned the Administration of the Tutorry to Sir *Thomas Burnet* of *Lyes*, and some others of the present Viscounts Relations on the Father side, and this Objection being proposed, when he endeavoured to expedite his Service before the Macers and Lords of Session, the same was sustained, and he was ordained to depone, if there is, or ever was any such Agreement betwixt him and the said Relations. And albeit he does depone that there is no such Agreement, yet neither he, nor Sir *Thomas Burnet* can deny, but that there was such an Agreement drawn up, albeit the same be not now extant, and that if the Service go on, he will be no more but a nominal Tutor, and the Administration will be in the hands of the other Relations: And this Objection can very soon be determined by your Grace and Lordships, and if I prevail, it will then follow of Course, that in Justice a competent number of Friends be appointed as Tutors Dative, and that either by your Grace and Lordships Appointment, or upon your Recommendation, by the appointment of the Lords of the Exchequer. But *2do*. If *Knox* and the Viscounts Relations on the Fathers side do prevail, it will indanger both the Viscounts Estate, and his Brothers and Sisters Education, for they will necessarily fall under the management of these Friends who have already malversed, and whose Nomination and Right of Tutorry is reduced by the Lords of Session. And it can never be expected, that they will give better Advice in the management of the present Viscounts Affairs, than they gave in the late Viscounts time: And what they did then advise, did almost tend to his ruine. For *1mo*. They got the late Viscount perswaded to enter into an Agreement with *Glenberoy* Sir *Thomas Burnets* Uncle, most disadvantageous upon the Viscounts part, and so unequal, that the same being quarrelled by me and some of my Friends, it was passed from, and no person had the confidence to maintain the justice of it, *2do*. I finding that the said Viscount had been thus imposed upon

I perswaded him to farm his Estate to Knox and Findowrie, whereby he would have payed yearly to the late Viscountess Dowager then alive, her Annuity, his whole Annualrents, and near ten Thousand *merks* of Principal Sum; and besides, he reserved a competent Subsistence to himself and Family. But his Relations in my absence quickly overturned this Settlement; and then they engaged him in a Contract with *Alexander Innes*, whereby he was constitute Factor, and *Sir Thomas Burnet* became bound as Cautioner for him, since which time there has been no part of the Principal Sums payed, albeit the said Viscountess her Annuity did fall, by reason of her death to the late Viscount. And for preventing all Objections that may be made or insinuate against my Daughter, that she had some hand in the unfortunate Management of the late Viscount's Affairs, it shall be made appear that she restricted herself for these many years past to 800 *merks* yearly, with which small Sum, and what money and others she got from her Mother and me, she maintained herself and her whole Children in Clothes, &c. payed her own, &c. their Servants Fees. So that the mismanagement can only be ascribed to the said Viscount's Relations, who both imposed upon him in making the Agreement with *Alexander Innes*, and in stating of the Accompts with him. 3^{tie}. Since the Viscount's death, and the time that he was on Death bed, its well known how anxious they have been to inbaunce the management of the present Viscount's Affairs, by imposing on him when in a Raging Fever, a Testament which they induced him to subscribe as laid in, by Intrometting with his Writs *breve manu*; and after they were turned out by the Decreet of the Lords, and Mr. *Mungo Carnegie* was appointed Factor by the Lords of Privy Council, who had secured a part of the Viscount's Vidual in a Lock-fast house, they or some persons by their Order, did enter into the said house, and took out the Vidual and disposed of it, and as is informed, at a Price far below what the Factor had sold it for. And all this being premised, it is left to your Grace and Lordships, to Determine if it be not more consonant to Justice, that the Estate should be managed by an equal number of Friends, of both Father side and Mother-side, and that their Interest should be confirmed by appointing them Tutors Dative in manner foresaid, than that persons that have so mis-managed formerly, should still be allowed to continue their management, and to exclude all my Daughters Relations from the same. And now in the Intervall and Vacation of the Session, there can be no Remedy but by the Sentence of this Honourable Court: and the Viscount and his Brothers and Sisters, their Case can admit of no delay, for year and day is now near run, since the time of their Fathers decease; and thereafter the Viscount will be Harassed with multitudes of Proceedings at the Instance of his Fathers Creditors, when he will have none to look after him, or defend him. And lastly as to the younger Children, and who are destitute of Provisions, being six in number, one Son and five Daughters: I humbly conceive they can be Educated no where so well, as in my Family, or in such other places as I shall appoint them, my Wife and I being their only Parents now alive. And it is Remitted to your Grace and Lordships, to moderate and appoint what Sum you think fit for their Aliment. As also I conceive, that your Grace and Lordships will think it just, that I have the Custody of the Viscount, for none will more tenderly care for him and his Brother and Sisters, not only upon the account of my Relation to them, but also in respect I have Substitute them in the Tailzie of my Estate, failzieing the Meirs of my Son *Strathnaver*.

It is therefore humbly Craved, that your Grace and Lordships will consider the Premises, and in respect thereof, find that Knox cannot be served Tutor of Law for the Reasons above mentioned. And that therefore You may appoint the persons contained in my former Petition, to be Administrators, and Recommend them to the Lords of Exchequer for a Gift of Tutorry: And also to give to me the Custody of the Children, and to appoint such Aliments to them, as your Grace and Lordships shall think fit, they being destitute of Provisions.

And Your Grace and Lordships Petitioner shall ever pray.

